TITLE 26—APPENDIX

RULES OF PRACTICE AND PROCEDURE OF THE UNITED STATES TAX COURT

As Amended to January 1, 1979

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*TITLE XXI—DECLARATORY JUDGMENTS—RETIREMENT PLANS, SECTION 367 EXCHANGES, EXEMPT ORGANIZATIONS

Rule 210. General

(a) Applicability: The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions, relating to the qualification of retirement plans, exchanges described in Code Section 367(a)(1), and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment. The Rules of this Title shall take effect on July 1, 1977.

(b) Definitions: As used in the Rules in this Title—

(1) "Retirement plan" has the meaning provided by Code Section 7476(d).

(2) "Exchange" is an exchange described in Code Section 367(a)(1).

(3) "Exempt organization" is an organization described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a) or is an organization described in Code Section 170(c)(2).

(4) "Private foundation" is an organization described in Code Section 509(a).

(5) "Private operating foundation" is an organization described in Code Section 4942(j)(3).

(6) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.

(7) A "determination" means—

(i) A determination with respect to the initial or continuing qualification of a retirement plan;

(ii) A determination as to whether an exchange is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or made with respect to the terms and conditions on which an exchange will be deemed not to be in pursuance of such a plan; or

(iii) A determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(8) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or as a private foundation or private operating foundation, is no longer qualified or classified as such an organization.

(9) "Action for declaratory judgment" is either a retirement plan action, a Section 367 action, or an exempt organization action, as follows:

(i) A "retirement plan action" means an action for declaratory judgment provided for in Code Section 7476 with respect to the initial or continuing qualification of a retirement plan.

(ii) A "Section 367 action" means an action for declaratory judgment provided for in Code Section 7477 with respect to an exchange.

(iii) An "exempt organization action" means a declaratory judgment action provided for in Code Section 7428 with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the

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* Amendment of Title, effective July 1, 1977.

initial or continuing classification of an organization as a private foundation or a private operating foundation.

(10) "Administrative record" includes the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination or such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. In addition—

(i) In the case of a determination relating to a retirement plan, the administrative record shall include the retirement plan and any related trust instruments, any written modifications thereof made by the applicant during the proceedings in respect of the request for determination before the Internal Revenue Service, and all written comments (and related correspondence) submitted to the Internal Revenue Service in those proceedings (see Section 3001(b) of the Employee Retirement Income Security Act of 1974).

(ii) In the case of a determination relating to an exempt organization or a private foundation or a private operating foundation, the administrative record shall include the charter or articles of incorporation or association, or trust indenture or agreement, and any similar or related documents of the organization and any modifications thereof.

(11) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In an exempt organization action, only the organization may be a petitioner.

(12) "Declaratory judgment" is the decision of the Court in a retirement plan action, a Section 367 action, or an exempt organization action.

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code Section 7476(a)(2)(B).

(2) There is an actual controversy. In that connection—

(i) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(ii) In the case of a Section 367 action, the exchange has begun before commencement of the action.

(iii) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified by Code Section 7476(b)(5) with respect to a retirement plan action, or the period specified by Code Section 7477(b)(4) with respect to a Section 367 action, or the period specified by Section 7428(b)(3) with respect to an exempt organization action. See Code Section 7502.

(4) The petitioner has exhausted all administrative remedies which were available to the petitioner within the Internal Revenue Service.

(d) **Form and Style of Papers:** All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.

Rule 211. Commencement of action for declaratory judgment

(a) **Commencement of Action:** An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.

(b) **Contents of Petition:** Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)" or "Petition for Declaratory Judgment (Section 367 Exchange)" or "Petition for Declaratory Judgment (Exempt Organization)." Each such petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

(c) **Petition in Retirement Plan Action:** The petition in a retirement plan action shall contain:

(1) **All Petitions:** All petitions in retirement plan actions shall contain the following:

(i) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

(ii) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing.

(2) **Employer Petitions:** In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(i) A separate numbered paragraph stating that he has complied with the requirements of the regulations issued under Code Section 7476(b)(2) with respect to notice to other interested parties;

(ii) A separate numbered paragraph stating that he has exhausted his administrative remedies within the Internal Revenue Service;

(iii) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code Section 7476(b)(4);

(iv) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify—

(A) the date of the notice of his determination,

(B) a copy of such notice of determination,

(C) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which he alleges to have been committed by the Commissioner in the determination, and

(D) a statement of facts upon which petitioner relies to support each such claim;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that—

(A) the requested determination is of the type described in Code Section 7476(a)(1) or (2),

(B) no determination has been made by the Commissioner in response thereto, and

(C) the retirement plan does qualify;

(vi) An appropriate prayer for relief; and

(vii) The signature of each petitioner or his counsel.

(3) Petitions Filed by Plan Administrators: In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:

(i) The name, address, and principal place of business, or principal office or agency, of each employer who is required to contribute under the plan; and

(ii) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.

(4) Employee Petitions: In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:

(i) A separate numbered paragraph setting forth a statement that he has qualified as an interested party in accordance with the regulations issued under Code Section 7476(b)(1);

(ii) In separate numbered paragraphs, the statements described in subparagraph (2)(ii) and (iii) of paragraph (c) of this Rule;

(iii) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(iv)(A), (C) and (D) of paragraph (c) of this Rule;

(iv) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which he relies to assert that such plan does not qualify and the facts to support each ground;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies—

(A) if he alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(v) of this Rule, or

(B) if he alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(v) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered subparagraph, upon which he relies to support his allegation that such plan does not qualify and the facts upon which he relies to support each ground; and

(vi) In separate numbered paragraphs, the statements described in paragraph (c)(2)(vi) and (vii) of this Rule.

(5) Petitions Filed by the Pension Benefit Guaranty Corporation: In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(ii), (iii), (iv), (v), and (vi) of this Rule.

(d) Petition in Section 367 Action: The petition in a Section 367 action shall contain:

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal office or agency;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a transferor or transferee of stock, securities, or property transferred in an exchange described in Code Section 367(a)(1);

(4) Separate numbered paragraphs stating—

(i) that the petitioner has exhausted his administrative remedies within the Internal Revenue Service;

(ii) that the exchange has begun in accordance with Code Section 7477(b)(3); and

(iii) the date on which the exchange began;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination was not reasonable; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating—

(i) that no such determination has been made by the Commissioner;

(ii) that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes; and

(iii) the terms and conditions, if any, which he deems reasonable;

(7) An appropriate prayer for relief; and

(8) The signature of each petitioner or his counsel.

(e) Petition in Exempt Organization Action: The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency;

(2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed;

(3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;

(4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that—

(i) no such determination has been made by the Commissioner; and

(ii) the organization is qualified under Code Section 501(c)(3) or 170(c)(2), or should be classified with respect to Code Section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;

(7) An appropriate prayer for relief; and

(8) The signature of the petitioner or its counsel.

(f) **Service:** For the provisions relating to service of the petition and other papers, see Rule 21.

Rule 212. Request for place for submission to the Court

At the time of filing a petition for a declaratory judgment, a request for place for submission to the Court shall be filed in accordance with Rule 140, and the provisions of that Rule shall be applied in designating such place. In addition to including in the request the information specified in Rule 140, the petitioner shall also include the date on which he expects the action will be ready for submission to the Court and his estimate of the time required therefor. In cases involving a revocation, the Commissioner shall, at the time of filing his answer, also set forth in a separate statement the date on which he expects the action will be ready for submission to the court and an estimate of the time required therefor. After the action becomes at issue (see Rule 214), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See Rule 217(b).

Rule 213. Other pleadings

(a) **Answer:** (1) *Time to Answer or Move:* The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation of the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation as to jurisdictional facts or as to inferences or conclusions that may be drawn from materials in the administrative record or as to facts involved in a revocation, he may so state, and such statement shall have the effect of a denial. Facts other than jurisdictional facts, and other than facts involved in a revocation, may be admitted only for purposes of the pending action for declaratory judgment. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(3) *Index to Administrative Record:* In addition, the answer shall contain an affirmative allegation that attached thereto is a complete index of the contents of the administrative record to be filed with the Court. See Rule 217(b). There shall be attached to the answer such complete index.

(4) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(b) **Reply:** Each petitioner shall file a reply in every action for declaratory judgment.

(1) *Time to Reply or Move:* The petitioner shall have 60 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects, the requirements of pleading applicable to the answer provided in paragraph (a)(2) of this Rule shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(3) *Effect of Reply or Failure Thereof:* Where a reply is filed, every affirmative allegation set

out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed admitted.

(4) *New Material:* Any new material contained in the reply shall be deemed to be denied.

Rule 214. Joinder of issue in action for declaratory judgment

An action for declaratory judgment shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

Rule 215. Joinder of parties

(a) **Joinder in Retirement Plan Action:** The joinder of parties in retirement plan actions shall be subject to the following requirements, and in other respects, to the extent relevant, shall be subject to Rules 61 and 62:

(1) *Permissive Joinder:* Any person who, under Code Section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has issued a notice of determination with respect to the qualification of the plan, any person joining in the petition must do so within the period specified in Code Section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue (see Rule 214). Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by his deputy, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service, see Form 13, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in his absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

(b) **Joinder of Parties in Section 367 Action:** A person may join in a Section 367 action only if he is a transferor or transferee of stock, securities, or property transferred in the same exchange in respect of which the declaratory judgment is sought, and only upon satisfying the jurisdictional requirements of Rule 210(c). In other respects, to the extent relevant, joinder of parties shall be subject to Rules 61 and 62. With respect to consolidation of actions, see Rule 141.

(c) **Joinder of Parties in Exempt Organization Action:** Joinder of parties is not permitted in an exempt organization action. See Code Section 7428(b)(1). With respect to consolidation of actions, see Rule 141.

Rule 216. Intervention in retirement plan actions

(a) **Who May Intervene:** The Pension Benefit Guaranty Corporation and, if entitled to intervene pursuant to the provisions of Section 3001(c) of the Employee Retirement Income Security Act of 1974, the Secretary of Labor, or either of them, shall be permitted to intervene in a retirement plan action in accordance with the provisions of Code Section 7476.

(b) **Procedure:** If either of the persons mentioned in paragraph (a) of this Rule desires to intervene, he shall file a pleading, either a petition in intervention or an answer in intervention, not later than 30 days after joinder of issue (see Rule 214) unless the Court directs otherwise. All new matters of claim or defense in a pleading in intervention shall be deemed denied.

Rule 217. Disposition of actions for declaratory judgment

(a) **General:** Disposition of an action for declaratory judgment, which does not involve a revocation, will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(10). Only with the permission of the Court, upon good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute.

(b) **Procedure:** (1) *Disposition on the Administrative Record:* The Court expects that, within 30 days after service of the answer, the parties

will file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(10), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for him in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. Except in a case involving a revocation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In the case of a revocation, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record. See subparagraph (3) of this paragraph.

(2) *Other Dispositions Without Trial:* In addition, an action for declaratory judgment may be decided on a motion for a judgment on the pleadings under Rule 120 or on a motion for summary judgment under Rule 121 or such an action may be submitted at any time by notice of the parties filed with the Court in accordance with Rule 122.

(3) *Disposition Where Trial Is Required:* Whenever a trial is required in an action for declaratory judgment, such trial shall be conducted in accordance with the Rules contained in Title XIV, except as otherwise provided in this Title.

(c) Burden of Proof: The burden of proof in declaratory judgment actions shall be as follows:

(1) *Retirement Plan Actions:* (i) *Parties Petitioner:* In all cases, the burden of proof shall be upon the petitioner as to jurisdictional requirements. The burden of proof shall be upon the petitioner, and upon any party joining or intervening on his side, as to those grounds set forth in the respondent's notice of determination that a retirement plan does not qualify. Where the respondent has determined that a retirement plan does qualify, the petitioner, and any party joining or intervening on his side, shall bear the burden of proof as to every ground on which he relies to sustain his position that such plan does not qualify. Where the Commissioner has failed to issue a notice of determination—

(A) the petitioner who contends that the retirement plan does qualify, and any party joining or intervening on his side, shall bear the burden of proof as to the jurisdictional requirements described in Rule 210(c) and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner; but

(B) the petitioner who contends that the retirement plan does not qualify, and any party joining or intervening on his side, shall bear the burden of proof as to the matters set forth in subparagraph (1)(i)(A) of this paragraph (c) and also as to the grounds and supporting facts on which he relies for his claim that the plan does not qualify.

(ii) *Parties Respondent:* The burden of proof shall be upon the respondent, and upon any party joining or intervening on his side, as to any ground not stated in the notice of determination upon which either relies to sustain the respondent's determination that a retirement plan does not qualify. If the respondent has not issued a notice of determination, he, and any party joining or intervening on his side, shall bear the burden of proof as to every ground upon which either relies to sustain his position that such plan does not qualify. See also subparagraph (1)(i)(B) of this paragraph (c).

(2) *Other Actions:* (i) *Petitioner:* The burden of proof shall be upon the petitioner as to jurisdictional requirements and as to the grounds set forth in the notice of determination. Where the Commissioner has failed to issue a notice of determination, the burden of proof shall be on the petitioner with respect to jurisdictional requirements, and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner.

(ii) *Respondent:* The burden of proof shall be upon the respondent as to any ground upon which he relies and which is not stated in the notice of determination. If the respondent has not issued a notice of determination, he shall bear the burden of proof as to every ground upon which he relies to sustain his position, other than those matters as to which the burden is on the petitioner under subparagraph (2)(i) of this paragraph (c) where such a notice is not issued.

Rule 218. Procedure in actions heard by a commissioner of the Court

(a) Where Commissioner Is To Make the Decision: When an action for declaratory judgment is assigned to a commissioner and he is authorized in the order of assignment to make the decision, the opinion of the commissioner and his proposed decision shall be submitted to and approved by the Chief Judge or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Commissioner Is Not To Make the Decision: Where an action for declaratory judgment is assigned to a commissioner but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 182 shall be followed.

*TITLE XXII—DISCLOSURE ACTIONS

Rule 220. General

(a) Applicability: The Rules of this Title XXII set forth the special provisions which apply to

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* New Title, effective August 1, 1977.

the three types of disclosure actions relating to written determinations by the Internal Revenue Service and their background file documents, as authorized by Code Section 6110. They consist of (1) actions to restrain disclosure, (2) actions to obtain additional disclosure, and (3) actions to obtain disclosure of identity in the case of third party contacts. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such disclosure actions. The Rules of this Title shall take effect on August 1, 1977.

(b) Definitions: As used in the Rules in this Title—

(1) A "written determination" means a ruling, determination letter, or technical advice memorandum. See Code Section 6110(b)(1).

(2) A "prior written determination" is a written determination issued pursuant to a request made before November 1, 1976.

(3) A "background file document" has the meaning provided in Code Section 6110(b)(2).

(4) A "notice of intention to disclose" is the notice described in Code Section 6110(f)(1).

(5) "Party" includes a petitioner, the respondent Commissioner of Internal Revenue, and any intervenor under Rule 225.

(6) A "disclosure action" is either an "additional disclosure action," and "action to restrain disclosure," or a "third party contact action," as follows:

(i) An "additional disclosure action" is an action to obtain disclosure within Code Section 6110(f)(4).

(ii) An "action to restrain disclosure" is an action within Code Section 6110(f)(3) or (h)(4) to prevent any part or all of a written determination, prior written determination, or background file document from being opened to public inspection.

(iii) A "third party contact action" is an action to obtain disclosure of the identity of a person to whom a written determination pertains in accordance with Code Section 6110(d)(3).

(7) "Third party contact" means the person described in Code Section 6110(d)(1) who has communicated with the Internal Revenue Service.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of a disclosure action under this Title unless the following conditions are satisfied:

(1) In an additional disclosure action, the petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code Section 6110(f)(2)(A) and (4)(A).

(2) In an action to restrain disclosure—

(i) The Commissioner has issued a notice of intention to disclose or, in the case of a prior written determination, the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection.

(ii) In the case of a written determination, the petition is filed with the Court within 60 days after mailing by the Commissioner of a notice of intention to disclose; or, in the case of a prior written determination, the petition is filed with the Court within 75 days after the date of publication of the notice in the Federal Register.

(iii) The petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code Section 6110(f)(2)(B) and (3)(A)(iii).

(3) In a third party contact action—

(i) The Commissioner was required to make a notation on the written determination in accordance with Code Section 6110(d)(1).

(ii) A petition is filed within 36 months after the first date on which the written determination is open to public inspection.

(d) Form and Style of Papers: All papers filed in a disclosure action shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action. In the case of anonymous parties, see Rule 227.

Rule 221. Commencement of disclosure action

(a) Commencement of Action: A disclosure action shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to the form of pleadings.

(b) Contents of Petition: Every petition shall be entitled "Petition for Additional Disclosure" or "Petition to Restrain Disclosure" or "Petition to Disclose Identity." Subject to the provisions of Rule 227, dealing with anonymity, each petition shall contain the petitioner's name and address, an appropriate prayer for relief, and the signature of the petitioner or his counsel. In addition, each petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

(c) Petition in Additional Disclosure Action: The petition in an additional disclosure action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination, prior written determination, or background file document, as to which petitioner seeks additional disclosure. A copy of any such determination or document, as it is then available to the public, shall be appended.

(2) The date of the petitioner's request to the Internal Revenue Service for additional disclosure, with a copy of such request appended.

(3) A statement of the Commissioner's disposition of the request, with a copy of such disposition appended.

(4) A statement that the petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(5) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which petitioner seeks additional disclosure together with any facts and reasons to support disclosure. See Rule 229 with respect to the burden of proof in an additional disclosure action.

(d) **Petition in Action to Restrain Disclosure:** The petition in an action to restrain disclosure shall contain:

(1) A statement that the petitioner is (i) a person to whom the written determination pertains, or (ii) a successor in interest, executor, or other person authorized by law to act for or on behalf of such person, or (iii) a person who has a direct interest in maintaining the confidentiality of the written determination or background file document or portion thereof, or (iv) in the case of a prior written determination, the person who received such prior written determination.

(2) A statement that the Commissioner has issued a notice of intention to disclose with respect to a written determination or a background file document, stating the date of mailing of the notice of intention to disclose and appending a copy of it to the petition; or, in the case of a prior written determination, a statement that the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection, and stating the date and citation of such publication in the Federal Register.

(3) A brief description (including any identifying number or symbol) of the written determination, prior written determination, or background file document, as to which petitioner seeks to restrain disclosure.

(4) The date of petitioner's request to the Internal Revenue Service to refrain from disclosure, with a copy of such request appended.

(5) A statement of the Commissioner's disposition of the request, with a copy of such disposition appended.

(6) A statement that petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(7) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which petitioner seeks to restrain disclosure together with any facts and reasons to support his position. See Rule 229 with respect to the burden of proof in an action to restrain disclosure.

(e) **Petition in Third Party Contact Action:** The petition in a third party contact action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination to which the action pertains. There shall be appended a copy of such determination, and the background file document (if any) reflecting the third party contact, as then available to the public.

(2) The date of the first day that the written determination was open to public inspection.

(3) A statement of the disclosure sought by the petitioner.

(4) A clear and concise statement of the impropriety alleged to have occurred or the undue influence alleged to have been exercised with respect to the written determination or on behalf of the person whose identity is sought, and the public interest supporting any other disclosure. See Rule 229 with respect to the burden of proof in a third party contact action.

(f) **Service:** For the provisions relating to service of the petition and other papers, see Rule 21.

(g) **Anonymity:** With respect to anonymous pleading, see Rule 227.

Rule 222. Request for place for submission to the Court

At the time of filing a petition in a disclosure action, a request for a place of hearing shall be filed in accordance with Rule 140, and the provisions of that Rule shall be applied in designating such place. In addition, the petitioner shall include the date on which he believes the action will be ready for submission to the Court and his estimate of the time required therefor. The Commissioner shall, at the time of filing his answer, also set forth in a separate statement the date on which he expects the action will be ready for submission to the Court and an estimate of the time required therefor. An intervenor shall likewise furnish such information to the Court in a separate statement filed with his first pleading in the case. After the action is at issue (see Rule 224), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See also Rule 229.

Rule 223. Other pleadings

(a) **Answer:** (1) *Time to Answer or Move:* The Commissioner shall have 30 days from the date of service of the petition within which to file an answer or move with respect to the petition, or, in an action for additional disclosure, to file an election not to defend pursuant to Code Section 6110(f)(4)(B), in which event he shall be relieved of the obligation of filing an answer or any subsequent pleading. With respect to intervention when the Commissioner elects not to defend, see Rule 225.

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(3) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(b) **Reply:** Each petitioner may file a reply or move with respect to the answer within 20 days from the date of service of the answer. Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted

or denied in the reply, shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied. Any new material contained in the reply shall be deemed denied.

Rule 224. Joinder of issue

A disclosure action shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

Rule 225. Intervention

(a) Who May Intervene: The persons to whom notice is required to be given by the Commissioner pursuant to Code Section 6110(d)(3), (f)(3)(B), or (f)(4)(B) shall have the right to intervene in the action as to which the notice was given. The Commissioner shall append a copy of the petition to any such notice.

(b) Procedure: If a person desires to intervene, he shall file an initial pleading, which shall be a petition in intervention or an answer in intervention, not later than 30 days after mailing by the Commissioner of the notice referred to in paragraph (a) of this Rule. In an action for additional disclosure where the Commissioner elects not to defend pursuant to Code Section 6110(f)(4)(B), the Commissioner shall mail to each person, to whom he has mailed the notice referred to in paragraph (a) of this Rule, a notice of his election not to defend, and any such person desiring to intervene shall have 30 days after such mailing within which to file a petition in intervention or an answer in intervention. The initial pleading of an intervenor, whether a petition or answer, shall show the basis for the right to intervene and shall include, to the extent appropriate, the same elements as are required for a petition under Rule 221 or an answer under Rule 223. An intervenor shall otherwise be subject to the same rules of procedure as apply to other parties. With respect to anonymous intervention, see Rule 227.

Rule 226. Joinder of parties

The joinder of parties in a disclosure action shall be subject to the following requirements, and in other respects, to the extent relevant, to Rules 61 and 62:

(a) Commencement of Action: Any person who meets the requirements for commencing such an action may join with any other such person in filing a petition with respect to the same written determination, prior written determination, or background file document. But see Code Section 6110(f)(3)(B) and (h)(4).

(b) Consolidation of Actions: If more than one petition is filed with respect to the same written determination, prior written determination, or background file document, see Rule 141 with respect to the consolidation of the actions.

Rule 227. Anonymous Parties

(a) Petitioners: A petitioner in an action to restrain disclosure relating to either a written determination or a prior written determination may file the petition anonymously, if appropriate.

(b) Intervenors: An intervenor may proceed anonymously, if appropriate, in any disclosure action.

(c) Procedure: A party who proceeds pursuant to this Rule shall be designated as "Anonymous." In all cases where a party proceeds anonymously pursuant to paragraph (a) or (b) of this Rule, such party shall set forth in a separate paper his name and address and the reasons why he seeks to proceed anonymously. Such separate paper shall be filed with his initial pleading. Anonymity, where appropriate, shall be preserved to the maximum extent consistent with the proper conduct of the action. See Rule 13(c), relating to contempt of court. With respect to confidential treatment of pleadings and other papers, see Rule 228.

Rule 228. Confidentiality

(a) Confidentiality: The petition and all other papers submitted to the Court in any disclosure action shall be placed and retained by the Court in a confidential file and shall not be open to inspection unless otherwise permitted by the Court.

(b) Publicity of Court Proceedings: On order of the Court, portions or all of the hearings, testimony, evidence, and reports in any action under this title may be closed to the public or to inspection by the public, to the extent deemed by the Court to be appropriate in order to preserve the anonymity, privacy, or confidentiality of any person involved in an action within Code Section 6110. See Code Section 6110(f)(6).

Rule 229. Burden of proof

The burden of proof shall be upon the petitioner as to the jurisdictional requirements described in Rule 220(c). As to other matters, the burden of proof shall be determined consistently with Rule 142(a), subject to the following:

(a) In an action for additional disclosure, the burden of proof as to the issue of whether disclosure should be made shall be on the Commissioner and on any other person seeking to deny disclosure. See Code Section 6110(f)(4)(A).

(b) In an action to restrain disclosure, the burden of proof as to the issue of whether disclosure should be made shall be upon the petitioner.

(c) In a third party contact action, the burden of proof shall be on the petitioner to establish that one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to the written determination by or on behalf of the person whose identity is sought.

Rule 230. Procedure in actions heard by a commissioner of the Court

(a) Where Commissioner Is To Make the Decision: When a disclosure action is assigned to a commissioner and he is authorized in the order of assignment to make the decision, the opinion of the commissioner and his proposed decision shall be submitted to and approved by the Chief Judge, or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Commissioner Is Not To Make the Decision: When a disclosure action is assigned to a commissioner but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 182 shall be followed.